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10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 **In re**
13 **CENTURION PROPERTIES III,**
14 **LLC,**
15 **Debtor.**

Case No. 10-04024-FLK 11

Chapter 11

16 **FIRST INTERIM ORDER**
17 **AUTHORIZING USE OF CASH**
18 **COLLATERAL PENDING FUTURE**
19 **ORDER**

20 THIS MATTER, having come before the Court on the Debtor's Expedited
21 Motion for Interim Order Authorizing Use of Cash Collateral Pending Final Order,
22 pursuant to 11 U.S.C. § 363, FRBP 9014, and LBR 4001-2, and the Response thereto
23 of General Electric Capital Corporation ("GECC"). It appearing from the evidence
24 before the Court the entry of this Order is in the best interest of the Debtor, the
25 Debtor's Estate, the creditors and other parties in interest; and it appearing that this
26 Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334; and it

FIRST INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
PENDING FUTURE ORDER - 1

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1 appearing that the proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2);
2 and it appearing that venue of this proceeding and this Motion is proper in this District
3 pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of this Motion and the
4 opportunity for a hearing on this Motion were appropriate under the circumstances
5 and that no other or further notice need be given; and after due deliberation and
6 sufficient cause appearing therefore, it is hereby **ORDERED**:

7 1. The Motion is hereby **granted in part and denied in part** as set forth
8 herein;

9 2. The Debtor is authorized to use cash collateral held in the Lockbox for
10 payment of:

- 11 a. The July 14, 2010 - Task Order Request in an amount not to
12 exceed \$123,500.52, as identified in the invoices previously filed
13 with the Court and;
- 14 b. The July 14, 2010 - Service Order Request in an amount not to
15 exceed \$133,315.16, as identified in the invoices previously filed
16 with the Court.
- 17 c. The Debtor is also authorized on an interim basis to receive the
18 sum of \$82,000.00 for purposes of anticipated and unanticipated
19 maintenance and repair expenses of the Battelle Property. This
20 money shall be placed in the Debtor's account, with expenditures
21 there from accounted for by the Debtor within thirty days of the
22 date expended.
- 23 d. The July 31, 2010 - Task Order and Services Order Requests
24 shall be submitted to GECC by the Debtor in a similar manner to
25 those Task Order and Service Order requests of July 14, 2010
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1 which shall be paid and funds released from the Lockbox to the
2 Debtor upon approval by GECC, in accordance with terms of this
3 Order.

4 3. Subject to its confirmation that the expenses covered by such Task Order
5 Request and Service Order Request are for expenses reasonably related to the
6 maintenance and repair of the Battelle Property, GECC is directed to instruct
7 Deutsche Bank to release from the Lockbox to the Debtor the amount of \$338,815.68,
8 representing the sum of the amounts set forth in paragraph 2.a, 2.b and 2.c.

9 4. Without prejudice to its claim to be paid default rate interest on its loan to
10 the Debtor, GECC is authorized to instruct Deutsche Bank to release from the
11 Lockbox to GECC the amount of \$330,000.00, representing the uncontested minimum
12 amount of adequate protection payment that GECC is entitled to receive for the month
13 of July 2010.

14 5. The Debtor, GECC and Deutsche Bank are authorized and empowered to
15 take all actions necessary to implement the relief granted in this Order, and the Stay is
16 hereby lifted to permit GECC to apply the payment described in paragraph 4 hereof to
17 the outstanding amount of GECC's loan to the Debtor in such order and manner as
18 GECC may be entitled to pursuant to its agreements with the Debtor.

19 6. GECC is entitled to adequate protection of its respective interests in
20 connection with the Debtor's use of cash collateral and imposition of the automatic
21 stay. At this time, however, the Court makes no findings or conclusions with respect
22 to the value of the Debtor's property, the "equity cushion," if any, that GECC has
23 therein or the adequacy of any such equity cushion as adequate protection.

24 7. In consideration for the use of cash collateral, pursuant to this Order,
25 GECC's first lien upon property owned, leased or otherwise controlled by the Debtor,
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1 and products, rents and proceeds, is hereby confirmed subject to further review of this
2 Court.

3 8. So long as the Debtor is authorized to use cash collateral pursuant to this
4 Order, the Debtor shall not seek any order under 11 U.S.C. § 364(d)(1) with respect to
5 any property of the Estate which is subject to a security interest of GECC except for
6 (i) a loan whose proceeds would be used to pay GECC's loan in full, and (ii) as GECC
7 may agree in writing.

8 9. If the protections afforded herein are, in retrospect, inadequate or
9 otherwise fail to adequately protect GECC's interest, GECC may be entitled to the full
10 extent of any deficiency, to the "super-priority" afforded by Section 507(b) of the
11 Bankruptcy Code.

12 10. The Debtor reserves the ability to seek additional use of cash collateral;
13 and GECC shall have the ability to withhold its consent, object to, contest, and
14 challenge any such additional use of cash collateral.

15 11. Except in case of emergency, unless GECC agrees otherwise in writing,
16 the Debtor is directed to provide GECC (i) at least 15 days' prior notice particularly
17 identifying the items for which the Debtor proposes to make further use cash collateral
18 together with (ii) a detailed operating budget for the month or months included in the
19 period during which such cash collateral is proposed to be expended.

20 12. The Debtor reserves the right to challenge default interest, penalties and
21 attorney's fees being asserted under the loan agreement, and GECC reserves the right
22 to claim the same, and shall otherwise have the right to defend and protect its right in
23 such manner as it may determine.

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PENDING FUTURE ORDER - 4

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1 13. Notwithstanding the possible applicability of Rules 6004(h), 7062, and
2 9014 of the Federal Rules of Bankruptcy Procedure, or otherwise, the terms and
3 conditions of this Order shall be immediately effective and enforceable upon its entry;

4 14. The Debtor may use GECC's cash collateral (i) only to the extent set
5 forth in paragraph 2 of this Order, and (ii) solely for the purpose of paying
6 expenditures, in the ordinary course of its business and (iii) subject at all times to the
7 provisions of this Order, the Bankruptcy Code and such restrictions as may be
8 imposed by the Court.

9 15. As part of the adequate protection of GECC's interest in cash collateral,
10 GECC is hereby granted a security interest pursuant to 11 U.S.C. § 552 and to the
11 extent provided in the existing security documents or applicable non-bankruptcy law,
12 to extent to the Debtor's property acquired before the petition date and to proceeds,
13 products, rents or profits of such property acquired by the Debtor after the petition
14 date, and a lien upon all post-petition collateral of the same nature and extent and in
15 all proceeds there from ("Replacement Collateral") as held by GECC pre-petition, to
16 secure any diminution in value of the cash collateral after the petition date (the
17 "Adequate Protection Lien").

18 16. The Adequate Protection Lien is deemed valid and enforceable as of the
19 petition date. The granting of the Adequate Protection Lien is in addition to the liens
20 and security interests of GECC in its existing collateral. The Replacement Collateral
21 is governed by all the terms of the Notes, security agreements and other financial
22 documents covering the collateral of GECC, except to the extent (if at all) directly
23 contrary to the terms this Order. The Adequate Protection Lien is deemed attached
24 and perfected automatically and retrospectively to the petition date by entry of this
25 Order. GECC shall not be required to record mortgages or file financing statements in
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FIRST INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
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1 order to perfect the Adequate Protection Lien. The Debtor shall provide (i) rental,
2 property maintenance, receivable and inventory reports to GECC on or before the
3 [first] day of each calendar month this Order (or a replacement cash collateral order) is
4 in effect commencing on August [1], 2010, and (ii) such other information relating to
5 the Battelle Property and its leasing as GECC may reasonably request from time to
6 time. In addition, the Debtor shall allow GECC access, no more than monthly, to
7 audit the status of rental, property maintenance, accounts receivable and inventory, on
8 reasonable notice.

9 17. The Debtor shall honor the covenants in the existing security documents
10 relating to insurance coverage on the existing collateral and insurance coverage shall
11 continue in full force and effect as to the existing collateral.

12 18. The Debtor shall timely file all United States Trustee Operating Reports
13 and provide copies to each Cash Collateral Lender.

14 19. Any of the following events shall constitute an event of default:

- 15 a. Failure of the Debtor to comply with the terms of this Order;
16 b. Entry of an order or judgment (i) terminating the authority of the
17 Debtor to use all or any portion of the existing collateral or
18 Replacement Collateral; or (ii) dismissing this bankruptcy case or
19 converting this case to a Chapter 7 case; or (iii) appointment of a
20 Trustee; and
21 c. This Order being vacated, amended (other than by agreement of
22 the parties with the approval of the Court), reversed or stayed.

23 20. Upon the occurrence of an event of default and the expiration of five (5)
24 business days following the date of the receipt by the Debtor or its counsel of a written
25 notice of default from GECC or its counsel, and the failure of the Debtor to cure such
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1 default within a ten (10) business day period (except in the case of a payment default,
2 which must be cured within two (2) business days after notice), the authority of the
3 Debtor to use the existing collateral or Replacement Collateral hereunder shall
4 immediately and automatically terminate, although the Debtor would retain the right
5 to seek relief from the Court. A hearing in connection with a default may be noted on
6 an expedited basis by either the Debtor or GECC, but GECC shall not be required to
7 obtain a hearing or further order of the Court if the Debtor does not contest a default
8 within the time provided in this paragraph.

9 21. The authority of the Debtor to use cash collateral will automatically
10 terminate, without further action by GECC, the Debtor or the Court, upon the
11 occurrence of an event of default as defined herein, or upon Order of the Court.

12
13 Presented by:

14 CRUMB & MUNDING, P.S.

15
16 */s/ John D. Munding*

17 JOHN D. MUNDING, WSBA #21734
18 Attorneys for Debtor-in-Possession.

19 Approved as to form,
20 Notice of Presentation Waived.

21
22
23 */s/ David B. Levant*

24 DAVID B. LEVANT, WSBA #20528
25 Attorneys for General
26 Electric Capital Corporation
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FIRST INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
PENDING FUTURE ORDER - 7

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23 */s/ David B. Levant*

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25 Attorneys for General
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PENDING FUTURE ORDER - 7

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So Ordered this 16th
day of July, 2010

Frank J. King
Bankruptcy Judge

FIRST INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
PENDING FUTURE ORDER - 8

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